THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.1116 of 2007

Dated:25.01.2007

Between

G.Appala Naidu

...Petitioner

And

The Executive Engineer,
Tribal Welfare Division,
Parvathipuram, Vizianagaram
District and three others.

...Respondents

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THE HON'BLE SRI JUSTICE V.ESWARAIAH

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ORDER:

This writ petition is filed to seeking to issue a writ of Mandamus declaring the letter in Rc.No.26/04/A1 dated 28.12.2006 of the first respondent as illegal and arbitrary and set aside the same and consequently, to direct the respondents not to encash the bank guarantees viz., (i) BG.No. 8/04 dated 26.04.2005, (ii) BG.No.6/05 dated 11.04.2005 for a sum of Rs.1,45,500 and Rs.2,17,203/- respectively.

It appears the petitioner was awarded the work of providing B.T.Road from Kuneru to Yendabgadra (0/0 – 13/1 K.M) in Vizianagaram District and the value of the said work is Rs.1,38,46,533/-. As per the agreement entered into between the parties, the said work has to

be completed by 14.04.2006. It is stated that as the said work has not been completed within the stipulated period, several notices have been issued and finally, a notice dated 16.03.2006 has been issued by the first respondent stating that the petitioner has executed the work by 10.02.2006 to an extent of Rs.43.12 lakhs only i.e., about 25% of the work. Accordingly, the petitioner was requested to send revised proposals/extension of time before the expiry of the agreement period; otherwise necessary action will taken against him. It is stated that pursuant to the said notice, the petitioner submitted a representation dated 22.03.2006 explaining the reasons for not completing the work within the stipulated period and requested to extend the time up to 31.03.2007.

The grievance of the petitioner is that without any reference to the explanation submitted by the petitioner, the first respondent invoked the two bank guarantees by the impugned letter on the ground that the petitioner failed to execute the work as per the conditions of the agreement and accordingly, requested respondent No.4-bank to cancel the said bank guarantees and send the amount through the Demand Draft in favour of the first respondent. Hence, the present writ petition.

Learned counsel appearing for the petitioner contended that there is a provision for extension of time under the said agreement and that without considering the representation dated 22.03.2006 made by the

petitioner for extension of time and without resolving the disputes among the parties, invoking of the two bank guarantees by the impugned letter is illegal and against the principles of natural justice.

In this case, there is absolutely no assistance from learned Government Pleader for Irrigation.

I have perused the relevant records filed in support of the writ petition.

A perusal of the agreement goes to show that all the disputes/claims above Rs.50,000/- in value shall be decided by a Civil Court of competent jurisdiction by way of a regular suit and not by way of arbitration.

In the instant case, the bank guarantees have been invoked on the ground that the petitioner failed to execute the work as per the agreement conditions and hence, the action of liquidating the bank guarantees has been taken and the amount was directed to be remitted to Government head. Admittedly, the petitioner has not adhered to the time schedule to execute the work and on the other hand he has ventilated certain reasons in the explanation for not executing the work within the stipulated time.

The internal disputes between the parties cannot be resolved in a writ petition. No doubt, in appropriate cases this Court issues a writ of Mandamus, if the invocation of the bank guarantee is contrary to the terms and conditions of the agreement and if there is no

violation of the terms and conditions of the agreement on the part of he contractor and in the interest of the public.

In the instant case, the petitioner has not adhered to the conditions of the time stipulated in the agreement and hence, invoking of the bank guarantees by the first respondent cannot be find fault, more so when the petitioner executed 25% of the work as against 75% of the work as on 26.02.2006. A year also completed thereafter.

In view of the aforesaid reasons, I am of the opinion that the petitioner is not entitled for any relief sought for in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed at the stage of admission. There shall be no order as to costs. However, it is open for the petitioner to pursue appropriate remedies available to him in accordance with law.

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(V.ESWARAIAH, J)

25.01.2007
DR